

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Duerr	Team: Team # 3	CCRB Case #: 200615030	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/11/2006 1:45 AM	Location of Incident: Pitkin Avenue and Shepherd Avenue	Precinct: 75	18 Mo. SOL 5/11/2008	EO SOL 5/11/2008	
Date/Time CV Reported Sat, 11/11/2006 2:15 AM	CV Reported At: Precinct	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/13/2006 9:45 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Sean Downes	03978	918975	075 PCT
2. POM Ronald Oneill	13386	903187	075 PCT
3. POM Niles Prince	22353	934076	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Niles Prince	Abuse: PO Niles Prince stopped § 87(2)(b)	
B.POM Ronald Oneill	Abuse: PO Ronald Oneill stopped § 87(2)(b)	
C.SGT Sean Downes	Abuse: Sgt. Sean Downes stopped § 87(2)(b)	
D.POM Ronald Oneill	Discourtesy: PO Ronald Oneill spoke obscenely to § 87(2)(b)	
E.POM Niles Prince	Force: PO Niles Prince used physical force against § 87(2)(b)	
F.POM Niles Prince	Abuse: PO Niles Prince frisked § 87(2)(b)	
G.POM Niles Prince	Abuse: PO Niles Prince drew his gun.	
H.POM Niles Prince	Abuse: PO Niles Prince threatened § 87(2)(b) with the use of force.	
I.POM Niles Prince	Abuse: PO Niles Prince refused to provide his name and shield number to § 87(2)(b)	
J.POM Ronald Oneill	Abuse: PO Ronald Oneill refused to provide his name and shield number to § 87(2)(b)	
K.SGT Sean Downes	Abuse: Sgt. Sean Downes refused to provide his name and shield number to § 87(2)(b)	

## Synopsis

At approximately 1:51 AM on November 11, 2006, § 87(2)(b) filed a complaint with IAB. That complaint, log number 06-38288, was subsequently referred to the CCRB on November 13, 2006. § 87(2)(b) stated that at approximately 1:45 AM on November 11, 2006, he was stopped by three officers dressed in plainclothes while he was walking to the train station located on Pitkin Avenue and Shepherd Avenue, in Brooklyn (**allegations A, B and C**). PO Ronald Oneill instructed § 87(2)(b) to “shut the fuck up” (**allegation D**) and put his hands up so that he could be searched. PO Niles Prince placed § 87(2)(b) “in a submission hold” (**allegation E**) and then frisked § 87(2)(b) (**Allegation F**). After § 87(2)(b) allegedly insulted the officers and their families, PO Prince allegedly removed his gun from its holster, handed it to Sgt. Downes, and then approached § 87(2)(b) (**allegation G**). PO Prince then allegedly said, “You’re too small. I will fuck you up,” (**allegation H**). PO Prince allegedly put his hand on § 87(2)(b)’s shoulder and squeezed, at which point § 87(2)(b) forcibly removed PO Prince’s hand. The officers left shortly after that, but not before § 87(2)(b) requested the officers’ names and badge numbers. None of the officers provided that information to him (**allegations I, J, and K**).

During his CCRB interview and follow-up telephone calls, § 87(2)(b) stated that he had intentions of filing a civil suit, therefore mediation was not offered.

§ 87(2)(g)

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b)’s complaint was generated when an operator connected him with IAB at 1:51 a.m. on November 11, 2006 (Encl. 7A-7C & 10A-10B). § 87(2)(b) stated to PO Ivan McFarlane of IAB that three officers dressed in plainclothes stopped him. An officer, PO1, told § 87(2)(b) to “shut the fuck up” and put his hands up so PO1 could search him. Another officer, PO2, placed § 87(2)(b) in a “feen,” which § 87(2)(b) described as a hold whereby the officer’s arms went under § 87(2)(b)’s underarms and then around the back of his neck. While holding § 87(2)(b) in this manner, PO1 “searched” § 87(2)(b) and PO2 stated that he wanted to fight § 87(2)(b). After being released from the hold, § 87(2)(b) told off the officers and told them to get back in their vehicle and leave him alone. One of the officers told § 87(2)(b) to get on a train. § 87(2)(b) told the officers that they should not have done what they did and that he was going to file a report. (PO McFarlane did not ask § 87(2)(b) to differentiate between the officers). One of the officers, a black male, took his gun out of his holster, handed it to another officer, a white male, and approached § 87(2)(b). The officer then grabbed § 87(2)(b)’s shoulder and pinched/squeezed it. The officers then returned to their vehicle and left, driving through a puddle that splashed water on § 87(2)(b). Towards the end of the conversation, PO McFarlane asked § 87(2)(b) what was the first thing that happened when the officers stopped him. § 87(2)(b) stated that an officer stated, “Stop kid.” § 87(2)(b) replied that he was not a kid. The officer then stated, “Just stop and put your hands up.” § 87(2)(b)’s telephone conversation with PO

McFarlane was cut short when another officer arrived on the scene to speak with him. PO McFarlane instructed § 87(2)(b) to speak with that officer but not to mention that he had spoken with IAB.

PO McFarlane then called the 75<sup>th</sup> Precinct stationhouse and reported the complaint to Sergeant Larry Flunory (Encl. 8A), who in turn called the IAB Command Center at 3:00 a.m. on November 11, 2006 to update the IAB log (Encl. 7A-7C & 11A). Sgt. Flunory informed PO McFarlane that § 87(2)(b) had stated to him that he was stopped by three plainclothes male officers, one of which was black and two of which were white. The officers were travelling in a blue vehicle. § 87(2)(b) stated that he sustained an injury to his hand and that he wished to file a complaint against the officers.

§ 87(2)(b) provided statements to the paramedics who arrived at the location and to the physician who attended him at § 87(2)(b) on § 87(2)(b) (Encl. 24A-L). § 87(2)(b) stated to the paramedics that three officers assaulted him, and that his arm and shoulders began to hurt after being grabbed from behind and/or put in a headlock (reporter's writing is somewhat illegible). § 87(2)(b) stated to a physician at § 87(2)(b) that he was "grabbed so hard by police officers in the train station."

Sergeant Joseph Tetonic and Detective Erwin Bustos of IAB Group 9 interviewed § 87(2)(b) at § 87(2)(b) on November 11, 2006 (Encl. 9A-9C and 12A-B). § 87(2)(b) provided a telephone statement to the CCRB on November 21, 2006 (Encl. 13C). The CCRB conducted an official interview of § 87(2)(b) on November 27, 2006 (Encl. 14A-14D). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) is a § 87(2)(b) old Black male, approximately 5'7" and 140 lbs. At approximately 1:45 AM on November 11, 2006, § 87(2)(b) was talking on his mobile phone while walking on Pitkin Avenue going towards the A/C train station located on the corner of Shepherd Avenue. § 87(2)(b) observed a dark unmarked vehicle going in the opposite direction. There was a White male looking out of the passenger side window. § 87(2)(b) heard the vehicle speed up. He looked back and observed the vehicle turn around. § 87(2)(b) turned the corner and the vehicle slowed down. Three officers dressed in plainclothes exited the vehicle. PO1 yelled out, "Hey, hey. Where are you going boy?" § 87(2)(b) asked PO1 who he was talking to. PO1 replied, "Stop right there kid." § 87(2)(b) replied that he is not a kid. The officers approached § 87(2)(b) and PO1 stated, "How about jerk?" PO1 and PO2 stood in front of § 87(2)(b) while PO3 stood behind § 87(2)(b). PO1, later identified via investigative action as PO Ronald Oneill, was described as a White male, approximately 5'6", short and chubby, with blonde hair. PO2, identified via investigative action as Sgt. Sean Downes, was described as a White male, approximately 5'10", and muscular. PO3, identified via investigative action as PO Niles Prince, was described as a Black male, approximately 5'8". PO Oneill ordered § 87(2)(b) to put his hands up so that he could be searched. § 87(2)(b) asked what was the probable cause for him to be searched. PO Oneill stated, "Shut the fuck up and just put your hands up so I can search you to make sure you don't have anything on you." § 87(2)(b) did not make this allegation in his statement to Sgt. Tetonic and Det. Bustos, and during his initial phone statement to the CCRB he only alleged that PO Oneill stated, "Just shut up so that I can search you." § 87(2)(b) stated to PO Oneill that he did not have his badge out and that he did not know that PO Oneill was a police officer. PO Oneill continued to tell § 87(2)(b) to shut up. An officer grabbed § 87(2)(b)'s right hand but § 87(2)(b) pulled back. § 87(2)(b) did not provide his name to the officers upon request. The officers did not request § 87(2)(b)'s identification.

After § 87(2)(b) continuously refused to put his hands up as instructed by PO Oneill, PO Prince put § 87(2)(b) in "some type of wrestling move" which hurt § 87(2)(b)'s shoulder. PO Prince's arms went under § 87(2)(b)'s underarm and then across his neck, forcing § 87(2)(b)'s arms to go up. In his statement to Sgt. Tetonic and Det. Bustos, § 87(2)(b) referred to the hold as a "full nelson lock,"

and in his initial telephone statement to the CCRB, he referred to it as “an illegal hold.” PO Prince “squeezed” § 87(2)(b) while PO Oneill frisked § 87(2)(b). After the frisk, PO Prince continued to “squeeze” § 87(2)(b). Sgt. Downes stood to the side while § 87(2)(b) was frisked. In his statement to Sgt. Tetonic and Det. Bustos, § 87(2)(b) stated that Sgt. Downes assisted in “frisking him,” “grabbed him up,” and threatened to “lock him up.” § 87(2)(b) did not make these allegations against Sgt. Downes in his official statement to the CCRB.

After PO Prince released § 87(2)(b) the officers walked towards their vehicle. § 87(2)(b) stated, “I don’t know why you’re doing this to me for. You don’t have your badges out. You’re all just some punks with some guns and badges.” An officer called § 87(2)(b) a bitch and § 87(2)(b) replied, “Your mother is a bitch. And your father and uncle too.” PO Prince removed his gun from its holster and handed it to Sgt. Downes and approached § 87(2)(b). § 87(2)(b) stated to PO Prince, “You could hit me if you want. You look like you want to hit me.” PO Prince then pinched § 87(2)(b)’s right shoulder and stated to § 87(2)(b) “You are too small. I will fuck you up.” In his statement to Sgt. Tetonic and Det. Bustos at § 87(2)(b), § 87(2)(b) alleged a similar interaction, but stated that he “cursed out” PO Prince after being released from the full nelson hold. PO Prince then told § 87(2)(b) that he was too small if he was trying to fight. § 87(2)(b) told PO Prince that if he did not have a gun and a badge then maybe “it would be something different,” at which point PO Prince removed his weapon from his holster, handed it to another officer, and approached § 87(2)(b). § 87(2)(b) said he did not want any problems, and PO Prince then put his hand on § 87(2)(b)’s shoulder and squeezed it. During his telephone statement to the CCRB, however, § 87(2)(b) failed to allege this interaction between he and PO Prince. When § 87(2)(b) was asked during his phone statement about what happened at the end of the incident, and even when further pushed for more details, § 87(2)(b) only alleged that the officers made comments about his mother and called him a bitch. He did not make any allegations about a gun being drawn. In fact, he stated that PO Prince “was just being real quiet” after he told PO Prince that he was “ashamed” of him. Additionally, § 87(2)(b) made the allegation that PO Prince threatened to fuck him up only in his official CCRB statement.

The incident concluded when § 87(2)(b) forcefully removed PO Prince’s hand from his shoulder, and Sgt. Downes told § 87(2)(b) to get on the train. § 87(2)(b) refused to do so and told the officers to leave him alone. After the officers entered their vehicle, the operator of the vehicle backed up and then accelerated rapidly over a puddle, which splashed on § 87(2)(b). § 87(2)(b) immediately called for an ambulance.

At some point § 87(2)(b) asked the officers for their names and badge numbers but they did not provide that information to him. § 87(2)(b) made this allegation only in his official statement to the CCRB.

## **Results of Investigation**

### **Identification of Officers Interviewed**

The Civilian Complaint form completed by Sgt. Flunory at the 75<sup>th</sup> Precinct stationhouse (Encl. 8A) as well as the IAB report, log number 06-38288 (Encl. 7A-7C), identified PO Niles Prince, PO Ronald Oneill and Sgt. Sean Downes as the officers present at the incident in question. Furthermore, the IAB Investigating Officer’s Report (Encl. 9A-9C) documents that Sgt. Tetonic confirmed with Lt. Hilbert of the 75<sup>th</sup> Precinct that PO Prince, PO Oneill and Sgt. Downes were assigned to unmarked RMP number 8142, whose license plate number is § 87(2)(e) (as opposed to § 87(2)(e) which § 87(2)(b) provided).

### **Officer Statements**

**PO Niles Prince:** On November 11, 2006 PO Prince was assigned to Precinct Ant-Crime with Sgt. Sean Downes and PO Ronald Oneill and traveled in an unmarked vehicle. He was dressed in plainclothes and

worked from 10:00 PM to 6:35 AM. PO Prince was seated in the back seat and could not recall who was the operator of the vehicle.

UF 250 (Encl. 16A & 17A): At approximately 1:45 AM on November 11, 2006 in the vicinity of Pitkin Avenue and Shepherd Avenue, PO Prince stopped and subsequently frisked a Black male who refused to provide his name, date of birth and address. The Black male was approximately 5'9" and 172 lbs. with black hair and brown eyes. PO Prince stopped the male because of a suspicious bulge, which was later determined to be a cell phone, and the male's furtive movements. PO Prince was dressed in plainclothes but did verbally identify himself as a police officer. The stop lasted approximately two minutes.

Memo book: 04:45, UF 250 prepared at Pitkin Avenue and Shepherd Avenue (Encl. 18A-18B).

CCRB Statement: PO Prince was interviewed at the CCRB on February 21, 2007 (Encl. 19A-19B) and on November 21, 2007 (Encl. 19C-19D).

At approximately 1:45 AM on November 11, 2006, PO Prince, PO Oneill and Sgt. Downes were driving in the vicinity of Pitkin Avenue and Shepherd Avenue. PO Prince explained that the vicinity has a large robbery pattern with the suspect described as a Black male, approximately 5'9" – 5'11", 165 to 189 pounds and between 20 to 25 years of age. The suspect was known to display a firearm and approach and rob people by the train station.

On the aforementioned date and time, the officers observed § 87(2)(b) pacing back and forth from the entrance of the train station to the corner of the block. PO Prince described the incident location as a residential neighborhood, in which there were no people outside or stores open for business. Because of these reasons, § 87(2)(b) appeared suspicious to the officers. The officers observed § 87(2)(b) for approximately two minutes before PO Oneill decided to approach § 87(2)(b). PO Prince and PO Oneill exited their vehicle and PO Oneill approached § 87(2)(b) identifying himself as a police officer. § 87(2)(b) complained that it was his third time being stopped that night, stating, "You guys are fucking harassing me." PO Oneill and PO Prince then explained to § 87(2)(b) their reason for approaching him. PO Prince stood to the side of § 87(2)(b) and PO Oneill spoke to him but never stood behind of § 87(2)(b). The officers asked § 87(2)(b) general information, such as his name and for identification, which § 87(2)(b) refused to provide. PO Prince could not recall if they asked § 87(2)(b) where he was coming from or why he was outside. § 87(2)(b) had two bulges around his waistband, which PO Prince frisked, and later determined were cell phones. PO Prince frisked the area because the suspect was wanted for armed robberies, which had been going on for "a couple of months" by the time of the interview. PO Prince did not reference a robbery pattern index sheet but stated that § 87(2)(b) fit the "general" description of the suspect (Black male, approximately 5'9" – 5'11", 165-189 lbs.). PO Prince emphasized that this was not an exact description, but simply a general one. Although PO Prince explained to § 87(2)(b) the reason he was being frisked, § 87(2)(b) was very combative during the frisk. As PO Prince reached for the bulge, § 87(2)(b) also attempted to reach for the bulge. PO Oneill grabbed one of § 87(2)(b)'s arms to prevent him from reaching for the bulge for safety purposes. PO Prince did not have any other physical contact with § 87(2)(b) besides frisking him and PO Oneill did not have any other physical contact with § 87(2)(b) besides grabbing his arm to prevent him from reaching for the bulges.

After PO Prince frisked § 87(2)(b) and the officers were about to leave the location, § 87(2)(b) stated that he was going to sue the officers and called PO Prince an "Uncle Tom." § 87(2)(b) also stated such things as, "Go fuck yourself. Fuck your mother, fuck your grandmother, fuck your grandfather." Sgt. Downes then exited the vehicle and attempted to explain to § 87(2)(b) the reason he was stopped, but § 87(2)(b) did not appear to care about what Sgt. Downes was saying. Sgt. Downes did not have any physical interaction with § 87(2)(b).

PO Prince could not recall if § 87(2)(b) asked any of the officers for their names and shield numbers. PO Prince did not have his badge out but stated that he was wearing a raid jacket that stated "NYPD." PO Prince could not recall if PO Oneill's or Sgt. Downes' badges were visible. Had § 87(2)(b) requested his name and shield number, PO Prince would have provided him with that information. None of the officers spoke discourteously towards § 87(2)(b). After walking away from § 87(2)(b) PO Prince did not turn around and pinch § 87(2)(b) on the shoulder or threaten to "fuck him up."

When the officers returned to their vehicle and drove off, they did not drive into a puddle and intentionally splash § 87(2)(b) with water. § 87(2)(b) used his cell phone immediately after the officers returned to their vehicle. PO Prince believed that § 87(2)(b) called 911 and complained that PO Prince, PO Oneill and Sgt. Downes were not police officers. The officers were instructed to return to the stationhouse several minutes after the incident.

ATS Duerr conducted a follow-up interview of PO Niles Prince on November 27, 2007 § 87(2)(g)

PO Prince stated that he did not remove his gun from his holster and give it to his sergeant. He stated, "No. That's unauthorized. I can't do that." He further stated that no officer drew his weapon. Additionally, when asked by ATS Duerr what was his interpretation of the term, "uncle tom," PO Prince stated that the term is used by one black person to another black person to indicated that one works for the government, or is a "sell out," as in, "(PO Prince) is selling out (his) race."

**PO Ronald Oneill:** On November 11, 2006 PO Oneill was dressed in plainclothes and worked from 5:30 PM to 2:05 AM with PO Niles Prince and Sgt. Sean Downes. PO Oneill was the recorder, seated in the front passenger's seat, PO Prince was seated in the back seat and Sgt. Downes was the operator of the vehicle.

Memo book: PO Oneill did not have any memo book entries regarding this incident (Encl. 20A).

CCRB Statement: PO Ronald Oneill was interviewed at the CCRB on February 15, 2007 (Encl. 21A-21B) and on November 26, 2007 (Encl. 21C-21D). § 87(2)(g) He explained that Pitkin Avenue and Shepherd Avenue, specifically because of the train station, is a robbery prone zone in which robberies usually occur between 1:00 AM and 5:00 AM. On this specific night in question, this vicinity was a specific "directed patrol" for PO Oneill, PO Prince and Sgt. Downes. The officers observed § 87(2)(b) pacing back and forth around the train station, and looking up and down Pitkin Avenue. Once the officers decided to approach § 87(2)(b) § 87(2)(b) observed them and attempted to go down the subway stairs. PO Oneill immediately stated to § 87(2)(b) "Excuse me, buddy, a moment of your time." § 87(2)(b) turned back up the stairs and verbally "let PO Oneill have it." PO Oneill refused to quote the discourteous language § 87(2)(b) used towards the officers. § 87(2)(b) asked PO Oneill, "What do you want?" "Why are you messing with me?" and began motioning towards his waistband. § 87(2)(b) stated that he had identification but PO Oneill immediately instructed § 87(2)(b) to refrain from putting his hands in his pants. § 87(2)(b) however, refused to comply causing PO Oneill and PO Prince to exit their vehicle. PO Prince approached § 87(2)(b) stood in front of him and instructed § 87(2)(b) to remove his hands from his waistband. As § 87(2)(b) refused to comply, PO Prince grabbed § 87(2)(b)'s hand and removed it from his waistband by pulling forward. At that point § 87(2)(b) complied and stated, "I got a cell phone." PO Prince frisked the waistband area and determined that § 87(2)(b) had cell phones in his waistband. § 87(2)(b) then stated, "See, it's just a cell phone. I don't have a gun. Why are you fucking with me? Go fuck off. If you did not have that gun and shield I'd fuck you up." PO Prince did not have any other physical contact with § 87(2)(b) nor did he stand behind of § 87(2)(b) at any point. PO Prince did not place § 87(2)(b) in a "full nelson." Sgt. Downes remained to the side of PO Oneill and neither had physical contact with § 87(2)(b). PO Oneill could not recall if Sgt. Downes conversed with § 87(2)(b). At some point PO Oneill walked behind of § 87(2)(b) and looked down the subway stairs to ensure that § 87(2)(b) had not dropped anything before the officers approached him.

PO Oneill had the most verbal interaction with § 87(2)(b) and gave the loudest commands; however, at no point did he speak discourteously towards § 87(2)(b). Furthermore, neither PO Prince nor Sgt. Downes spoke discourteously towards § 87(2)(b). PO Prince did not threaten to use physical force against § 87(2)(b) nor did he pinch § 87(2)(b) on the shoulder.

Once the officers determined that § 87(2)(b) did not have a weapon, they attempted to return to their vehicle. § 87(2)(b) requested PO Oneill's name and shield number. PO Oneill informed § 87(2)(b) that his name and shield number was on his badge, which he had around his neck. PO Oneill also verbally provided his name to § 87(2)(b). PO Oneill did not recall § 87(2)(b) requesting Sgt. Downes or PO Prince's name and shield number and did not recall if they provided that information to § 87(2)(b).

When the officers returned to their vehicle and drove off, they did not drive into a puddle and intentionally splash § 87(2)(b) with water. PO Oneill noticed that § 87(2)(b) did not go into the subway. The officers then drove around the block and when they returned, approximately a minute and a half later, § 87(2)(b) was not in the vicinity. PO Oneill did not observe EMS at the location when they returned nor did he recall any radio runs for EMS response to that location.

ATS Duerr conducted a follow-up interview of PO Ronald Oneill on November 26, 2007 § 87(2)(g).

PO Oneill stated that PO Prince did not give his gun to Sgt. Downes at any point, nor did PO Prince take his gun out of his holster.

**Sgt. Sean Downes:** On November 11, 2006 Sgt. Downes was dressed in plainclothes worked from 5:20 PM to 2:10 AM with PO Niles Prince and PO Ronald Oneill.

Memo book: Sgt. Downes did not have any memo book entries regarding this incident (Encl. 22A-22B).

CCRB Statement: Sgt. Sean Downes was interviewed at the CCRB on June 13, 2007 (Encl. 23A-23B). § 87(2)(g) On the night in question, the officers observed § 87(2)(b) standing by the train station. They proceeded to drive past him and when they returned approximately five minutes later, § 87(2)(b) was still standing at the top of the stairs. Sgt. Downes explained that due to numerous robberies in the vicinity of Pitkin Avenue the officers made a collective decision to inquire about § 87(2)(b)'s conduct and reason for being in the area. Sgt. Downes further stated that § 87(2)(b) was not looking towards any specific direction, rather he was just standing by the train station. However, that § 87(2)(b) was standing outside of the train station at 1:45 AM with no other individuals in the vicinity became suspicious to Sgt. Downes and the other officers. When asked about the pattern regarding the numerous robberies, Sgt. Downes explained that no particular pattern had been determined because, although there were numerous robberies taking place, different individuals were committing the crime. When the officers drove up to § 87(2)(b) stopping approximately five to ten feet away from where § 87(2)(b) was standing, an officer asked § 87(2)(b) for his name. § 87(2)(b) backed away and replied, "Fuck you. Why are you stopping me?" PO Prince and PO Oneill then exited their vehicle and PO Prince approached on the side of § 87(2)(b) while PO Oneill approached § 87(2)(b) from the front. PO Oneill instructed § 87(2)(b) several times to keep his hands away from his pockets, which § 87(2)(b) refused to do. Sgt. Downes, who exited the vehicle once § 87(2)(b) was stopped and remained on the sidewalk behind of the officers, speculated that PO Oneill frisked § 87(2)(b) as he was standing in front of § 87(2)(b) and reached for § 87(2)(b)'s arm when § 87(2)(b) reached for his waistband. However, Sgt. Downes did not observe where PO Oneill's hands went. At some point Sgt. Downes stood to the side of § 87(2)(b) and then walked back towards the vehicle. PO Prince and PO Oneill conversed with § 87(2)(b) but Sgt. Downes did not hear the details of that conversation. Sgt. Downes did recall, however, that § 87(2)(b) refused to answer PO

Prince and PO Oneill's numerous questions. § 87(2)(b) "basically told the officers to fuck themselves." § 87(2)(b) was agitated and he yelled at the officers. Sgt. Downes did not recall whether § 87(2)(b) provided identification or if any of the officers requested to see it. Sgt. Downes recalled that a UF 250 (Stop & Frisk report) was completed.

Sgt. Downes did not have any physical contact with § 87(2)(b). Although PO Prince and PO Oneill stood close to § 87(2)(b) the only contact that was made was presumably by PO Oneill when he frisked § 87(2)(b). PO Prince did not pinch § 87(2)(b) nor did he enact a wrestling hold on § 87(2)(b). Sgt. Downes did not recall PO Prince or PO Oneill removing their gun from their holster.

Sgt. Downes did not recall § 87(2)(b) requesting his, PO Prince or PO Oneill's name and shield numbers. Sgt. Downes did not recall § 87(2)(b) complaining of any injuries or requesting medical attention. When the officers left the location, § 87(2)(b) remained on the sidewalk.

#### **Medical Records from § 87(2)(b)**

§ 87(2)(b) was transported to § 87(2)(b) via EMS on § 87(2)(b). § 87(2)(b)'s chief complaint was pain in his right arm and shoulder. There was evidence of a muscle strain/spasm. § 87(2)(b) was prescribed 800 mg Motrin (Encl. 24A-24L). § 87(2)(b) was sent through "fast track" and was discharged later that morning.

#### **NYPD Documents**

##### **IAB Intake Recording, Log number 06-38288:**

*Track 1 – (Encl. 7A-7C & 10A-10B)*

The recording documents § 87(2)(b)'s initial complaint regarding the incident in question. Operator 1351 connected § 87(2)(b) with PO McFarlane of IAB and informed PO McFarlane that § 87(2)(b) stated that he was strangled by police officers. § 87(2)(b) later clarified that he was stopped by three male officers dressed in plainclothes and that one of the officers placed him in a "feen," a hold whereby the officer's arms went under § 87(2)(b)'s underarms and then around the back of his neck. § 87(2)(b) did not state that he was "strangled."

*Track 2 – (Encl. 7A-7C & 11A)*

The recording documents a call from Sgt. Flunory of the 75<sup>th</sup> Precinct to PO McFarlane. Sgt. Flunory confirmed that he was with § 87(2)(b) at the incident location and briefly repeated § 87(2)(b)'s complaint to PO McFarlane. Sgt. Flunory stated that he would request EMS for § 87(2)(b) as he claimed injury to his hand. PO McFarlane asked Sgt. Flunory if he would be able to identify the officers based on § 87(2)(b)'s descriptions but Sgt. Flunory was unable to do so at the time.

**Photographs of § 87(2)(b) by IAB (Call-out Investigation):** Photographs taken by Det. Bustos and Sgt. Tetonic of Group 9 when they interviewed § 87(2)(b) at § 87(2)(b) several hours after the incident in question (Encl. 15A-15D). 15A and 15B are photographs of § 87(2)(b) and 15C and 15D are photographs of § 87(2)(b) pointing to the injured area on his right shoulder and right forearm, respectively. The photos do not depict any injuries.

**75<sup>th</sup> Precinct Tour 1 Command Log:** The command log reflects that at approximately 4:55 AM on November 11, 2006, Sgt. Flunory reported that a CCRB complaint was filed regarding a male stopped on Pitkin Avenue and Sheridan Avenue with an alleged injury (Encl. 26A). IAB log number provided: 06-38288. Aided number provided: § 87(2)(b)

**75<sup>th</sup> Precinct Tour 1 Roll Call:** The roll call reflects that PO Prince worked from 10:00 PM to 6:35 AM on November 11, 2006 (Encl. 27A). PO Oneill and Sgt. Downes do not appear on the roll call.



**Fleet Services Database:** The Fleet Services Database revealed that plate number § 87(2)(e) is a black unmarked 1998 Ford Crown Victoria assigned to the 75<sup>th</sup> Precinct (Encl. 28A).

#### **Notice of Claim**

The New York City Office of the Comptroller confirmed on November 30, 2007, that § 87(2)(b) did not file a notice of claim in regards to this incident.

#### **Subject Officers CCRB History**

PO Niles Prince has been a member of the NYPD for three years. The NYPD has not imposed discipline for any of PO Prince's CCRB allegations (Encl. 3A-3B).

PO Ronald Oneill has been a member of the NYPD for thirteen years. In January 1998, the Board recommended command discipline for detention (Encl. 4A-4B) in case 9800088. In January 2000, the NYPD found PO Oneill guilty of an improper stop and frisk to which they imposed command discipline B.

Sgt. Sean Downes has been a member of the NYPD for ten years. In February 2007, the Board recommended charges for four substantiated allegations in case 200600024: stop and question, premises entered and searched, and frisk and search of person. There was no NYPD disposition available as of the writing of this report (Encl. 5A-C)

#### **Complainant/ Victim History**

§ 87(2)(b) has not filed any prior CCRB complaints (Encl. 6A).

### **Conclusions and Recommendations**

#### **Identification of Subject Officers**

§ 87(2)(b) alleged that three officers dressed in plainclothes and traveling in an unmarked vehicle stopped him while he was walking to the train station. Sgt. Tetonic, who responded to Brookdale Hospital to interview § 87(2)(b) confirmed with Lt. Hilbert of the 75<sup>th</sup> Precinct that Sgt. Downes, PO Prince and PO Oneill were assigned to Precinct Anti-Crime in an unmarked vehicle with license plate number § 87(2)(b). § 87(2)(b) provided license plate number § 87(2)(e) when he filed his complaint. The stop and frisk report filed confirmed that PO Prince stopped and frisked a Black male at approximately 1:45 AM on November 11, 2006 in the vicinity of Pitkin Avenue and Shepherd Avenue, in Brooklyn. Furthermore, upon interviewing the officers, they confirmed that they did indeed stop § 87(2)(b) on the aforementioned date and time and PO Prince affirmed that it was he who frisked § 87(2)(b). Although § 87(2)(b) alleged that it was PO Oneill, a White male, who frisked him while PO Prince held him in a "submission hold," PO Prince, a Black male, admitted to having frisked § 87(2)(b)'s waistband due to his sudden hand gesture towards his waistband. § 87(2)(b) further alleged that PO Oneill and PO Prince spoke obscenely to him and that PO Prince threatened him with physical force after pinching him on his right shoulder. § 87(2)(b) also alleged that the officers refused to provide their names and shield numbers upon request. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

#### **Undisputed Facts**

§ 87(2)(b) was stopped by three officers dressed in plainclothes in the vicinity of Pitkin Avenue and Shepherd Avenue, in Brooklyn. An officer frisked § 87(2)(b)'s waistband. § 87(2)(b) became agitated when the officers approached him and so § 87(2)(b) spoke discourteously towards them.

#### **Disputed Facts**

§ 87(2)(g)

### **Credibility**

§ 87(2)(g) For example, § 87(2)(b) did not mention until his CCRB interview that PO Prince, PO Oneill and Sgt. Downes allegedly refused to provide their names and shield numbers upon request. Prior to his official interview, § 87(2)(b) had only mentioned – in his telephone statement to CCRB – that he requested PO Oneill's name and shield number. Additionally, § 87(2)(b) indicated in his CCRB statement that PO Prince drew his gun and approached § 87(2)(b) immediately after § 87(2)(b) had said to the officers, "Your mother is a bitch. And you father and your uncle too." However, § 87(2)(b) did not assert this scenario in any of his previous statements. Rather, § 87(2)(b) alleged in his statement to Sgt. Tetonic and Det. Bustos that PO Prince removed his gun from his holster and approached § 87(2)(b) in reaction to § 87(2)(b)'s claim that if PO Prince did not have a gun and a badge then maybe "it would be something different." In his initial statement to IAB, § 87(2)(b) simply stated that PO Prince had taken his gun out of his holster, gave it to another officer, and approached § 87(2)(b) § 87(2)(g)

§ 87(2)(b) when specifically questioned about what happened toward the end of the incident, § 87(2)(b) Arched stated that the officers made references to his mother but PO Prince was "being real quiet."

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Sgt. Downes stated that there was no general pattern regarding the robberies as different individuals were committing the crimes. PO Prince, however, testified that § 87(2)(b) fit a "general" description of the suspect, especially with the two bulges on his waistband, as the suspect was known to be in possession of a firearm. PO Prince stated that they observed § 87(2)(b) for approximately two minutes before deciding to approach him, whereas Sgt. Downes stated that they observed § 87(2)(b) for approximately five minutes. § 87(2)(g)

§ 87(2)(b) Sgt. Downes was the only officer to claim that after first observing § 87(2)(b) they drove away and then observed him standing there again when they returned. Moreover, Sgt. Downes testified that § 87(2)(b) was standing near the train station, while the other two officers testified that § 87(2)(b) was pacing. All of the officers agreed that PO Oneill grabbed § 87(2)(b)'s arm to prevent him from touching his waistband. Sgt. Downes testified that he did not see where PO Oneill's hands went after he removed § 87(2)(b)'s hands from his waistband. Sgt. Downes speculated that PO Oneill might have frisked § 87(2)(b) but he was not certain as he was not standing directly next to the officers or § 87(2)(b) PO Oneill and PO Prince confirmed that it was PO Prince who frisked § 87(2)(b) § 87(2)(g)

### **Allegations Not Pleaded**

In his official statement to the CCRB, § 87(2)(b) alleged that an officer called him a "bitch" after he complained that the officers did not display their badges and called them "some punks with guns and badges." § 87(2)(b) could not determine which officer made the discourteous remark. Furthermore, § 87(2)(b) did not make this allegation in his initial complaint to IAB or when he provided a statement to Sgt. Tetonic and Det. Bustos, which were made on the same evening of the incident. § 87(2)(g)

**Allegation A: PO Niles Prince stopped** § 87(2)(b)

**Allegation B: PO Ronald Oneill stopped** § 87(2)(b)

**Allegation C: Sgt. Sean Downes stopped** § 87(2)(b)

§ 87(2)(b) alleged that PO Prince, PO Oneill and Sgt. Downes stopped him while he was en route to the train station located at Pitkin Avenue and Shepherd Avenue, in Brooklyn. Although Sgt. Downes testified that he observed § 87(2)(b) standing by the subway stairs and PO Prince and PO Oneill testified that they observed § 87(2)(b) pacing from the corner to the subway and looking up and down Pitkin Avenue, all three officers affirmed that § 87(2)(b) portrayed suspicious behavior and that he was in the vicinity of the train station. According to the officers' testimony, they questioned § 87(2)(b) before their suspicion was raised to the level necessary for a "stop." § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

According to the officers, the area in the vicinity of the incident had been experiencing numerous robberies in which the suspect was carrying a weapon and acted between 1:00 AM and 5:00 AM. Sgt. Downes explained that no particular pattern had been determined because, although there were numerous robberies taking place, different individuals were committing the crimes. PO Prince, on the other hand, stated that § 87(2)(b) fit a "very general" description of a suspect. Sgt. Downes further explained that given that § 87(2)(b) had been standing by the train station for approximately five minutes at 1:45 AM with no other individuals in the vicinity his, as well as PO Prince's and PO Oneill's, suspicions were elevated. The NYPD Street Encounters: Legal Issues Guide (Encl. 1A) states that an officer can approach an individual without "any articulable reason to approach." It further states that "suspicion of criminality is not required, however, the member of service must be able to articulate a basis beyond mere whim and caprice." The NYPD Street Encounters guide also states that an officer may approach an individual based on founded suspicion that criminality is afoot." The officers explained that upon observing § 87(2)(b) for several minutes in this robbery prone location, they jointly decided to approach § 87(2)(b) because of the time of night and the fact the § 87(2)(b) did not appear to be entering the station, rather he was simply waiting at the top of the staircase, behavior that they believed to be indicative of possible criminality. Once the officers gained § 87(2)(b)'s attention, § 87(2)(b) became verbally combative and appeared to want to leave the location. PO Oneill also stated that when the officers finally approached him, § 87(2)(b) attempted to reach into his pockets to retrieve identification, despite PO Oneill's commands to keep his hands away from his waistband. PO Prince explained that upon approaching § 87(2)(b) he observed a bulge around § 87(2)(b)'s waistband, which § 87(2)(b) attempted to reach for as PO Prince also reached for it. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D: PO Ronald Oneill spoke obscenely to** § 87(2)(b)

In his official statement to the CCRB, § 87(2)(b) alleged that when PO Oneill approached him he stated, "Shut the fuck up and just put your hands up so I can search you to make sure you don't have anything on you." PO Oneill testified that he did not use any discourteous language towards § 87(2)(b). PO Prince and Sgt. Downes confirmed PO Oneill's testimony stating that PO Oneill did not use any discourteous language towards § 87(2)(b) at any point. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E: PO Niles Prince used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Prince enacted a “full nelson” on him, in which PO Prince’s arms went under § 87(2)(b)’s underarms and then around the back of his neck, forcing § 87(2)(b)’s arms to go up. § 87(2)(b) also alleged that PO Prince pinched him on his right shoulder, causing a severe sharp pain to his shoulder. Medical records from § 87(2)(b) document that § 87(2)(b) suffered a muscle strain/spasm. § 87(2)(g)

**Allegation F: PO Niles Prince frisked § 87(2)(b)**

§ 87(2)(b) initially claimed to have been searched, but during his official CCRB statement he clarified that he was only frisked. Although § 87(2)(b) alleged that PO Oneill frisked him, PO Prince admitted that it was he, and he alone, who frisked § 87(2)(b)

PO Prince testified that it was his understanding that armed robberies had been occurring in the vicinity. Although Sgt. Downes stated that there was no general pattern, as different individuals were wanted for the robberies, PO Prince stated that § 87(2)(b) fit the general description of the suspect. When PO Oneill approached § 87(2)(b) he identified himself as a police officer. § 87(2)(b) complained that it was his third time being stopped that night, stating, “You guys are fucking harassing me.” PO Oneill and PO Prince then explained to § 87(2)(b) their reason for approaching him, but § 87(2)(b) became combative and disobeyed the officers’ instructions to keep his hands away from his waistband. At or about that time, PO Prince observed two bulges around § 87(2)(b)’s waistband. As PO Prince reached for the bulge, § 87(2)(b) also attempted to reach for the bulge. PO Oneill grabbed one of § 87(2)(b)’s arms to prevent him from reaching for the bulge for safety purposes. PO Prince then frisked § 87(2)(b) and determined that the bulges were cell phones. PO Prince documented this in the stop and frisk report.

Although the general rule regarding frisks is that an officer must have reasonable suspicion to believe a suspect has committed a crime *and* a reasonable suspicion that the suspect is armed and dangerous, some courts have noted several exceptions. As noted in *Barry Kamins’ New York Search and Seizure*: “There is a line of cases in which frisks were upheld even though the police did not reasonably suspect a particular defendant of criminal activity. In these cases, the police were initially justified in making an inquiry of a suspect, and upon approaching the suspect observed a bulge on the suspect’s person.” (Encl. 2A) § 87(2)(g)

**Allegation G: PO Niles Prince drew his gun.**

**Allegation H: PO Niles Prince threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that PO Prince drew his gun, handed it to his sergeant, and approached § 87(2)(b). § 87(2)(b) also alleged that after approaching him, PO Prince stated, “You are too small. I

will fuck you up.” PO Prince denied ever removing his gun from his holster, and he also denied saying, “I will fuck you up,” or threatening § 87(2)(b) in any way. PO Oneill and Sgt. Downes corroborated PO Prince’s statement.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation I: PO Niles Prince refused to provide his name and shield number to § 87(2)(b)**  
**Allegation J: PO Ronald Oneill refused to provide his name and shield number to § 87(2)(b)**  
**Allegation K: Sgt. Sean Downes refused to provide his name and shield number to § 87(2)(b)**  
In his official statement to the CCRB, § 87(2)(b) alleged that PO Prince, PO Oneill and Sgt. Downes refused to provide their name and shield numbers upon request. However, § 87(2)(b) failed to make these allegations in his initial complaints to IAB or in his statements to Sgt. Tetonic and Det. Bustos, which were made on the same evening of the incident. PO Oneill recalled that § 87(2)(b) did request his name and shield number, to which PO Oneill replied that the information was on his badge, which he wore around his neck. PO Oneill also stated his name to § 87(2)(b) PO Oneill did not recall § 87(2)(b)

§ 87(2)(b) requesting PO Prince's or Sgt. Downes' name and shield numbers. PO Prince could not recall if § 87(2)(b) requested his name and shield number nor could he recall if PO Oneill or Sgt. Downes provided that information to § 87(2)(b) PO Prince explained that his badge was not visible but that he was wearing an NYDP "raid" jacket. Sgt. Downes did not recall § 87(2)(b) requesting any of the officers' names and shield numbers. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: